

REMARKS/ARGUMENTS

Claims 1, 5, 8, 11-22 and 36 are under examination in the application. The Final Office Action mailed on January 8, 2009 includes a single remaining rejection: Claims 1, 5, 8, 11-22 and 36 are rejected under 35 U.S.C. § 103(a), as being unpatentable.

Claim Rejections – Claims 1, 5, 8, 11-22 and 36 are rejected under 35 U.S.C. § 103(a), as being unpatentable over Fleischner, Brand and Cho.

Claims 1, 5, 8, 11-22 and 36 stand rejected under 35 U.S.C. § 103(a) over U.S. Patent No. 6,291,533 to Fleischner ("Fleischner '533") in view of Brand, et al. (An Outstanding Food Source of Vitamin C, The Lancet, Vol. 320 Issue 833, p. 873) ("Brand") and further in view of U.S. Publication No. 2002/0192314 to Cho, et al. ("Cho '314").

Fleischner '533 does not disclose or suggest an antioxidant composition that includes a flavonoid and a mixture of vitamin E forms that are present in the composition in a weight ratio of from 40/60 to 90/10 percent. The Office, however, cites to *In re Boesch*, 617 F.2d 272, 205 USPQ 212 (CCPA 1980) for the proposition that selecting variables is ordinarily within the skill in the art as obtained from Brand (Vitamin C) and/or Cho (grape skin extract).

However, *In re Boesch* does not apply in this situation because, as shown in FIG. 2 and as discussed in paragraph [0031], the present inventors discovered a synergistic effect that is realized in the antioxidant capacity of the composition when the flavonoid and the mixture of vitamin E forms are present in the claimed compositions in a weight ratio of from 40/60 to 90/10 percent. The synergistic effect is realized as an antioxidant capacity that is greater than the additive effect that would be expected from the addition of the flavonoid and the mixture of vitamin E forms to the composition and could not possibly be within the ordinary skill in the art. The present inventors discovered this enhanced antioxidant capacity achieved by the claimed compositions as a result of the combination of the flavonoid and vitamin E in a weight ratio of from 40/60 to 90/10 percent that was unexpected and therefore not a result effective variable. None of Fleischner, Brand or Cho provide any teaching of synergism or the expectation that such synergism would occur at the ratios claimed. Such unexpected results are not predictable and,

therefore, in accordance with MPEP § 2143.01 (III) would not be obvious to one of ordinary skill in the art.

Accordingly, claims 1, 5, 8, 11-22 and 36 are not rendered obvious by Fleischner, Brand and Cho, or any combination thereof. Applicants respectfully request the Examiner withdraw the rejection under 35 U.S.C. § 103(a).


CONCLUSION

In light of the foregoing, Applicants submit that claims 1, 5, 8, 11-22 and 36 are in condition for allowance, and an early Notice of Allowance of all pending claims is respectfully solicited. This paper is being filed with all required fees; however, if any additional fees are necessary the Commissioner is hereby authorized to charge any fees, including those for an extension of time, to Chalker Flores, LLP's Deposit Account No. 50-4863.

If the Examiner has any questions or comments, or if further clarification is required, it is requested that the Examiner contact the undersigned at the telephone number listed below.

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Respectfully submitted,
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